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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,499	10/18/2001	William E. Bartasevich JR.	CREPP0154US	7503

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

CS

Office Action Summary	Application No. 09/982,499	Applicant(s) BARTASEVICH, JR. ET AL	
	Examiner Joseph C. Merek	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

EU

The amendment filed 3/24/04 has minor omissions but has been entered. All claims must include a parenthetical expression as to their status as described in Rule 1.121. Claims 2-4, 7, 8, 11, 12, and 13 did not include a parenthetical expression. When a claim is canceled the claim should be identified as follows: 11. (Canceled). Since the claim was lined through in its entirety it has been treated as canceled. Applicant's representative is advised that all subsequent amendments must be in compliance with Rule 1.121 or they will be held as non-responsive.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 5, and 6, set forth a seamless joint between the flexible material and the walls and between the flexible material and the bottom. The flexible material as claimed is fused to the walls and the bottom. The fusing represents a joint with a seam as the hinge is shown as being on top of each wall. Additionally there is a gap on the ends of the hinge as seen in Fig. 8. It is not clear what is being claimed. The joint is clearly not seamless. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bromley in view of Meacham et al (US 5,711,444). Regarding claim 1, Bromley does not teach the hinge being a different material than the walls or the bottom. Meacham et al, as seen in Figs. 10 and 11, teaches joining to plastic members for folding with a plastic hinge that is made of a different material than the joined members. It would have been obvious to employ the separate and different material hinge of Meacham et al in the container of Bromley to provide a more flexible hinge. As it is best understood, the joint is seamless between the floor and the walls and the hinge is 102a. The hinge is a resilient and flexible material known in the art as a living hinge. The force transmitting surfaces on the walls and the bottom are seen in Figs. 5, 6, 9 and 10 of Bromley. 114 and 155 are on the bottom and 116 and 117 are on the walls. The force-transmitting surfaces are located between two of the walls and the bottom. This is

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all that is required by the claims. Regarding claim 4, the walls each define a plane and the surfaces of the walls include surfaces as seen in Fig. 3 of Bromley that are normal to the plane. The ribs are normal to the plane. Regarding claims 5, and 6, see Fig. 9 of Bromley where the surfaces on the bottom is seen as T-shaped. 114 is narrower than 115 and therefore the structure is T-shaped. Moreover, the opening in the walls for receiving 114 and 115 is seen as 117 and 116 is T-shaped. Regarding claim 12, the process steps do not require any structure that is not in the combination of references.

Claims 1-4, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umiker in view of Meacham et al (US 5,711,444). Regarding claim 1, Umiker does not teach the hinge being a different material than the walls or the bottom. Meacham et al, as seen in Figs. 10 and 11, teaches joining to plastic members for folding with a plastic hinge that is made of a different material than the joined members. It would have been obvious to employ the separate and different material hinge of Meacham et al in the container of Umiker to provide a more flexible hinge or to provide a longer lasting hinge. As it is best understood, see Fig. 7 of Umiker where the force transmitting surfaces is 16. Regarding claim 2, see where some of the hinges are elevated with respect to the others as seen in Fig. 2. Regarding claim 3, see Fig. 2 where alternate walls are hinged to elevated surfaces. Regarding claim 4, see the ribs are normal to the vertical plane of the walls. Regarding claim 10, see Fig. 2. Regarding claim 12, the process steps do not require any structure that is not in the combination of references.

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Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umiker in view of Meacham et al as applied to claim 1 above and further in view of Clark et al (US 6,131,757). Regarding claim 7, Umiker teaches a folding container with a locking mechanism between adjacent sidewalls for securing the walls in the raised position but does not teach the groove for receiving the band extending around the walls for retaining the walls in the raised position. Clark et al teaches this claimed structure as seen in Fig. 1 and 5. It would have been obvious to employ the band of Clark et al in the container of Umiker to provide an alternative way to hold the walls in the raised position. Regarding claim 8, the band is removable. Regarding claim 9, see Fig. 2 of Umiker where the walls have ribs adjacent the edges. There will be notches in the ribs for the band.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bromley in view of Meacham et al as applied to claim 1 above and further in view of Clark et al (US 6,131,757). Regarding claim 7, Bromley teaches a folding container with a locking mechanism between adjacent sidewalls for securing the walls in the raised position but does not teach the groove for receiving the band extending around the walls for retaining the walls in the raised position. Clark et al teaches this claimed structure as seen in Fig. 1 and 5. It would have been obvious to employ the band of Clark et al in the container of Bromley to provide an alternative way to hold the walls in the raised position. Regarding claim 8, the band is removable. Regarding claim 9, see Fig. 3 of Bromley where the walls have ribs adjacent the edges. There will be notches in the ribs for the band.

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Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bromley in view of Meacham et al as applied to claim 1 above and further in view of Baughan (US 3,327,921). Regarding claim 13, Bromley does not teach the third pair of opposed walls. Baughan as seen in Figs. 1-6, teaches a folding container with three pairs of opposed walls. It would have been obvious to employ the three pairs of walls of Baughan in the container of Bromley to provide an alternative shape.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Umiker in view of Meacham et al as applied to claim 1 above and further in view of Baughan (US 3,327,921). Regarding claim 13, Umiker does not teach the third pair of opposed walls. Baughan as seen in Figs. 1-6, teaches a folding container with three pairs of opposed walls. It would have been obvious to employ the three pairs of walls of Baughan in the container of Umiker to provide an alternative shape.

Response to Arguments

Applicant's arguments filed 2/17/04 have been fully considered but they are not persuasive. Applicant provides a definition of a seam to show that the structure that is claimed is seamless. This is not accurate. The hinge of the instant invention has cracks or seams as seen in the drawings where the separate hinge element joins the sidewall and the bottom. The point at where the parts are joined is the seam. Therefore the 112nd rejection has been maintained.

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Applicant argues that since the container of Meacham et al does not show the structure of the t-shaped rib it is not enabled and cannot function. This is not correct. The test is if one of ordinary skill in the art would be able to make or use the invention based on the given disclosure. One of ordinary skill in the art would know what the t-shaped rib that goes into the groove. This is common hung structure. To add adhesive is well known and disclosed by the Meacham et al reference. The combination of the t-shaped rib and the adhesive does not lack any structure that is set forth in claim1. Roericht (US 5,615,765) is cited as extrinsic evidence that one of ordinary skill in the art would know what to do with the t-shaped rib. Roericht as seen in the figs. shows the structure similar to what Meacham et al describes. The elastomeric hinge has a profiled end that is received into a groove for retaining the hinge element in place.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Satoh et al and Louis are both cited for teaching hinge elements that are bonded or fused to the hinged parts where the hinge elements are of a different material than the hinged parts.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

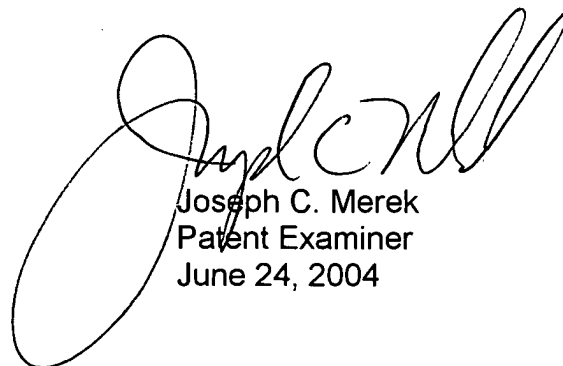
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Joseph C. Merek
Patent Examiner
June 24, 2004